***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION NO : 25484 of 2005

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% 27.12.2005

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Between:

Grindwell Norton Limited

.. PETITIONER

AND

The Chairman-cum-Presiding Officer and another.

.. RESPONDENTS

! COUNSEL FOR THE PETITIONER: MR.C.R.SRIDHARAN

^ COUNSEL FOR RESPONDENT NO.2: MR.M.V.PRATAP REDDY

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> Head Note:

? CITATIONS:

1. 2001 LLR 1083

2. 1983 II LLJ 425

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ORDER:

The petitioner challenges the order, dated 20.09.2005, passed by the Industrial Tribunal-cum-Labour Court, Anantapur, in I.A.No.154 of 2005 in I.D.No.135 of 2003.

The 2nd respondent was initially appointed as a general Workman in the year 1979. He is said to have been promoted and designated as Chargehand in the year 1990, and Senior Chargehand with effect from June 1995. The petitioner

terminated the services of the 2nd respondent through order, dated 10.03.2003. Thereupon, the 2nd respondent approached the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act').

The petitioner filed I.A.No.154 of 2005 before the Labour Court, with a request to frame an issue, as to the maintainability of the I.D. It was pleaded that the 2nd respondent was discharging the Supervisory functions, and having regard to the nature of duties and amount of salary, which he was drawing at the relevant point of time, he cannot be treated as a Workman; and thereby, he was not entitled to raise an Industrial Dispute under Section 2-A(2) of the Act. The application was resisted by the 2nd respondent. Through the impugned order, the Labour Court did not accede to the request of the petitioner.

Sri C.R.Sridharan, the learned counsel for the petitioner submits that the 2nd respondent cannot be treated as a workman, and in that view of the matter, it was not competent for the Labour Court to have entertained the I.D. Placing reliance upon several Judgments of the Supreme Court, particularly the one in ***Husasan Mithu Mhasvadkar vs. Bombay Iron & Steel Labour Board***, he contends that whenever there is a doubt about the status of a workman, in the context of definition under Section 2(s) of the Act, the Labour Court is under obligation to resolve that controversy as a preliminary issue, instead of requiring the Management to undergo the entire ordeal of full trial of the matter.

Sri M.V.Pratap Reddy, the learned counsel appearing for the 2nd respondent, on the other hand, submits that the question as to whether the 2nd respondent is a workman, as defined under Section 2(s) of the Act, can be decided only after extensive evidence is adduced with reference to the nature of duties etc., and no exception can be taken to the order passed by the Labour Court. He contends that the attempt of the petitioner is only to protract the proceedings. He too placed reliance upon several Judgments rendered by this Court as well as the Supreme Court.

In the Industrial Dispute raised by the 2nd respondent, the petitioner raised a preliminary objection as to its maintainability, on the ground that the 2nd respondent is not a workman. The petitioner insisted that the controversy be resolved, by framing a preliminary issue.

A perusal of the catena of decisions relied upon by both the parties, discloses that there does not exist any hard and fast rule either way. For example, the Supreme Court in ***D.P.Maheswari vs. Delhi Administration & Others***, disapproved the practice of the High Courts in issuing directions to the Labour Courts to frame preliminary issues and decide them. In contrast, in ***Husasan Mithu Mhasvadkar'***s case (1 supra), the Supreme Court took the view that whenever a doubt is expressed either by the Court or by the Management, as to the status of a workman, in the context of the definition under Section 2(s) of the Act, the dispute must be resolved by framing a preliminary issue. Much depended upon the necessary facts, on the strength of which the corresponding objection was put forward.

A perusal of the record, in the instant case, discloses that the 2nd respondent was inducted into service as an ordinary workman. The nature of promotions or the additional duties assigned to him at subsequent stages can be ascertained, only after the relevant evidence is adduced. In the ordinary course of things, the preliminary issues are those, which can be decided mostly by referring to the relevant provisions of law, without the necessity to lead or examine the evidence. Having regard to the fact that the disputed questions of fact viz., the nature of duties and amount of salary paid to the 2nd respondent, can be resolved only after both the parties adduce evidence, this Court is of the view that the Labour Court can be required to dispose of the matter finally, but, addressing the issues separately.

For the foregoing reasons, the Writ Petition is disposed of, directing that the Labour Court shall frame an independent issue as to whether the 2nd

respondent is a workman within the meaning of Section 2(s) of the Act and answer it independently in the Award, through which the I.D. is disposed of. Further, it shall be open to both the parties to lead evidence and put forward their respective contentions on this aspect. The I.D. shall be disposed of within a period of four (4) months from the date of receipt of copy of this order. There shall be no order as to costs.

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27.12.2005

Note:

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